IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.1320 OF 2003

1. S. Savitri,
2. D.V.Subramaniam,
3. T.P. Shankar Narayan,

Both of Bombay, Indian Inhabitant,
residing at No.10, "Sahana"
Borla Uttam Society, Saint Anthony Road,
Chembur, Mumbai-400 071.

...Plaintiffs.

Vs.

1. Jesika Manoj Doshi,
2. Manoj P. Doshi,

Both of Mumbai, Indian Inhabitant,
residing at No.52, Khatar Galli,
Block No.200-B, CP Tank Circle,
Mumbai- 400 004.

...Defendants.

Ms. Purnima Bhatia for the Plaintiffs.
None for the Defendants.

CORAM: A.S. OKA, J.
DATE : JULY 24,2007

ORAL JUDGMENT

1. This suit is placed on the board under the caption "For want of Written Statement". Hearing of the suit has been expedited by this court by order dated 27th November, 2006. The defendants have not filed their written statement though they were directed to do so by order dated 27th November, 2006.

2. The plaintiffs have tendered on record affidavit in

lieu of examination-in-chief of the second plaintiff. The said affidavit is marked "X" for identification and the same is taken on record. Alongwith the list, the plaintiffs have tendered on record the original documents. List of documents is marked "Y" (Collectively) for identification and the same is taken on record.

3. According to the case of the plaintiffs, the first defendant is the wife of the second defendant. According to the case of the plaintiffs, on the request made by the defendants, the plaintiffs had advanced an aggregate amount of Rs.2,34,645/- to the defendants between 13th April,2000 and 18th January,2001 by their cheques drawn on Karnataka Bank, Sion (E), State Bank of Hyderabad, Sion (E) and Syndicate Bank, Koliwada Branch favouring first defendant. According to the case of the plaintiffs, the defendants had agreed to repay the said amount of loan together with interest at the rate of 18% per annum. The case of the plaintiffs is that on 27th October,2000, 28th November,2000 and 19th February, 2001, a payment towards interest of sums of Rs.1000/-, Rs.1200/- and Rs.2000/- respectively was made by the defendants. However, no amount was paid towards the principal. By letter dated 15th April,2002, the plaintiffs called the defendants to

repay the due amount with interest. As the amount was not paid, present suit has been filed.

4. The claim of the plaintiffs has been proved by way of affidavit in lieu of examination-in-chief of the second plaintiff. The documents which are tendered along with the list are also proved by the said affidavit in lieu of evidence filed by the second plaintiffs. The letters issued by the aforesaid banks prove the fact that total amount of Rs.2,34,645/- was paid by the plaintiffs to the defendants. Pass Books and Cheques books of the bank accounts of the plaintiffs are also filed on record. Office copy of the demand notice alongwith the postal acknowledgment is placed on record. There is no reason why the case made out by the plaintiffs should not be accepted in so far as payment of principal amount is concerned. The plaintiffs have prayed for further interest at the rate of 18% per annum. Considering the nature of the transaction, further interest at the rate of 18% per annum cannot be granted and the interest will be payable at the rate of 6% per annum.

5. Hence, there will be a decree in terms of prayer clause (a) and (b) subject to modification that the interest at the rate of 6% per annum will be payable on

the principal amount of Rs.2,34,645/- from the date of institution of the suit till realization or the payment.

6. The plaintiffs will be entitled to refund of court fee , if any, in accordance with the rules.

7. Certified copy is expedited.

(A.S. OKA, J.)